

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Order delivered on: November 25, 2013*

+ **C.R.P. No.17/2013**

POOJA SHARMA Petitioner

Through Mr.Mohit Gupta, Adv. with
Ms.Megha Gaur & Ms.Alka Chojar,
Adv.

versus

GURMEET KAUR Respondent

Through Mr.R.P.Singh, Adv.

CORAM:

HON'BLE MR. JUSTICE MANMOHAN SINGH

MANMOHAN SINGH, J.

1. The petitioner (plaintiff before the learned trial Court) has assailed the order dated 18th September, 2012 whereby the application filed by the petitioner under Order XII Rule 6 read with Section 151 CPC was dismissed.

2. The case of the petitioner before the learned trial Court was that one Sh.Harbans Lal son of Late Sh.Komal Ram Arora was the earlier owner of Flat No.22, situated on first floor in Surair Co-operative Group Housing Society, plot No.7, Sector-15, Rohini, Delhi-110085 (hereinafter referred to as "the suit property") and inducted the respondent (defendant in suit proceedings) as his tenant on a monthly rent of ₹2000/- excluding other charges vide an agreement dated 28th April, 1995 for a period of eleven months. The tenancy of the respondent continued subject to respondent's

revising the rent and lastly, the respondent was paying ₹3500/- per month as the rent exclusive of other charges. It was further submitted that said Sh.Harbans Lal terminated the monthly tenancy of the respondent vide legal notice dated 18th April, 2006 since the respondent did not vacate the premises earlier and the tenancy of the respondent was not continued by Sh.Harbans Lal and respondent started depositing the rent of ₹3500/- with the Court of the Rent Controller.

3. It was submitted that the respondent filed a Suit bearing No.1002/2006 for permanent injunction in April, 2006 against Sh.Harbans Lal for restraining him from dispossessing the respondent from the said property without due process of law and on 2nd May, 2006, Sh.Harbans Lal made the statement in the said suit not to dispossess the respondent from the property without following due process of law. Accordingly the said suit was disposed off on 2nd May, 2006.

4. In the year 2007, Sh.Harbans Lal filed a suit for possession and recovery of mesne profits in the Court of Administrative Civil Judge, however, the said suit was withdrawn, though the respondent filed her written statement wherein she admitted that the rate of rent at that point of time was ₹3500/-. In the meantime, Sh.Harbans Lal sold the said property to the petitioner. The petitioner applied with DDA to get the said property freehold as well as for the execution of conveyance deed with the Sub Registrar-VII, New Delhi on 22nd December, 2010. The petitioner contends that this fact was well within the knowledge of the respondent.

5. The respondent filed a suit for permanent injunction against the present petitioner bearing Suit No.441/2010 which was disposed off by the learned Administrative Civil Judge-cum-Addl. Rent Controller vide order

dated 18th August, 2011 as the petitioner agreed not to dispossess the respondent without due process of law.

6. Thereafter, the petitioner sent a legal notice dated 14th November, 2011 to the respondent requiring the rent to be revised to ₹3850/- per month with effect from 1st January, 2012. The said notice was duly served upon the respondent. Further, by notice dated 4th January, 2012 the petitioner terminated the tenancy of the respondent while giving 15 days time from the date of receipt the said notice to hand over the vacant and peaceful possession of the suit property to the petitioner. As the respondent failed to comply with the notice, she is liable to pay damages/ mesne profits @ ₹1,30,000/- per month with effect from 1st January, 2012 which was the market rent in the area till handing over the vacant and peaceful possession of the suit premises to the petitioner as according to the petitioner the respondent is having the intention to part with the possession of the said property to some other person. The petitioner/plaintiff filed the suit for the recovery of possession, damages/mesne profits as well as permanent injunction against the respondent.

7. Upon notice, respondent appeared and filed her written statement whereby she denied the case of the petitioner and contended that the suit is not maintainable as being without any cause of action. She further denied the relationship of landlady and tenant between the parties. Though, she submitted that she lastly paid monthly rent of ₹3500/- to the previous owner Sh.Harbans Lal, hence she is protected under the Delhi Rent Control Act (hereinafter referred to as “the Act”) and can be evicted only under the provisions of the said Act.

8. After filing of the written statement, on 6th June, 2012, the petitioner filed the application under Order XII Rule 6 CPC on the basis that the respondent has admitted the case of the petitioner in clear and specific terms and as such, the petitioner is entitled to the judgment on the basis of admission made by the respondent. The respondent denied of having made any such admission on the part of the respondent. The said application was dismissed by the learned Trial Court vide order dated 18th September, 2012.

9. It was recorded by the learned Trial Court in the impugned order that the pleadings of the parties clearly show that the respondent has not admitted the case of the petitioner in clear, specific or unambiguous terms. The petitioner has not placed on record the registered sale deed in her favour in respect of the suit property, rather she placed on record merely a copy of the GPA and an agreement to sell and purchase. Thus, the pleadings of the parties as well as points raised by the parties show that the matter needs trial and cannot be decided at this stage and as such, no judgment on admission under the provisions of Order XII Rule 6 CPC can be passed in favour of the petitioner.

10. Aggrieved of the impugned order, the petitioner filed the present petition. I have heard learned Counsels for the parties. Order 12 Rule 6 CPC reads as under:

“Judgment on admissions - (1) Where admissions of fact have been made either in the pleading or otherwise, whether orally or in writing, the Court may at any stage of the suit, either on the application of any party or of its own motion and without waiting for the determination of any other question between the parties, make such order or give such judgment as it may think fit, having regard to such admissions.

Whenever a judgment is pronounced under Sub-rule (1), a decree shall be drawn up in accordance with the judgment and the decree shall bear the date on which the judgment was pronounced.”

11. A bare perusal of Order 12 Rule 6 CPC re-produced above makes it clear that the emphasis is on admission of relevant facts. If the relevant facts have been admitted, the mere fact that the respondent has tried to put their own interpretation to those facts with a view to defeat the claim of the petitioner would not be a sufficient ground to decline relief under Order 12 Rule 6 CPC.

12. Admittedly the respondent was inducted as a tenant by Sh. Harbans Lal, the erstwhile owner of the suit property, who consequently sold the said property to the petitioner and the petitioner applied with DDA to get the said flat freehold as well as for the execution of conveyance deed was executed with the Sub Registrar VII, New Delhi on 22nd December 2010, copy of which is placed on record. The original of the said conveyance deed was shown to the Court during the course of proceedings. Admission on the part of the respondent that Sh. Harbans Lal was the previous owner and that he was being paid the monthly rent was mentioned in para No.2 of the written statement filed by the respondent.

Increase of rent more than ₹3500/-

13. Admittedly the rate of rent of the suit property was ₹3,500/- which was also found in Para No.2 of the written statement. The petitioner after becoming the owner of the suit property sent a legal notice dated 14th November, 2011 to the respondent by Registered AD, Speed Post and Courier requiring a 10% increase in the existing amount of rent, i.e. ₹3,850/- per month. The copy of the said notice is placed on record. There is as per legal notice, the revised rent of ₹3,850/- was to be paid w.e.f. 1st

January, 2012. In case the caution of the petitioner is accepted, the tenancy came out of the purview of the Act and was monthly tenancy; the petitioner terminated it vide notice dated 4th January, 2012. The respondent was given fifteen days from the date of receipt of this notice to hand over vacant and peaceful possession of the suit property. But instead of complying with the same, respondent sent a flimsy reply dated 10th January, 2012.

14. The reference of legal notice dated 14th November 2011 regarding the increase of rent from ₹3,500/- to ₹3,850/- was duly mentioned in Para No.8 of the notice dated 4th January 2012 as well but the respondent in her reply dated 10th January, 2012 never disputed the receipt of the said notice dated 14th November, 2011, which clearly implies that the said notice was duly received by the respondent and the rate of rent was legally enhanced from ₹3,500/- to ₹3,850/-. Factum of receipt of notices were denied by the respondents at the time of hearing.

As the respondent failed to hand over vacant and peaceful possession of the premises, the petitioner filed a suit for recovery of possession, damages/mesne profits as well as permanent injunction against the respondent.

15. The Division Bench of this Court in the case of ***Rohini Varshnei vs. R.B.Singh***, reported in 155 (2008) DLT 440 (DB) in paras 17 to 21 of the said judgment observed as under:-

“17. On examination of the rival contentions of learned counsel for the parties, we find no merit in the plea of the appellant. Our decision is predicated on the important aspect of the respondent having sought increase of 10 per cent of the rent in terms of Section 6A of the said Act and the appellant’s failure to increase the rent. This is a statutory entitlement of the respondent and on the failure of the appellant to increase the rent, it would amount to

non payment of the appropriate rent. Once the earlier rent of Rs.3,500/- is at least not in dispute, the 10 per cent increase would take the rent to Rs.3850/- and thus take the dispute outside the protection of the said Act. This is naturally the consequence of the notice dated 09.05.2002.

18. Before filing of the suit, the appellant had issued a notice determining the month to month lease and seeking possession on 20.08.2002, receipt of which is not disputed and the notice has been replied to. At the stage when such possession was sought, the correct undisputed rent would have been Rs.3850/- assuming that the original rent was only Rs.3,500/- per month and not Rs.3,550/- per month. Thus these three ingredients required for passing a decree for possession also stands satisfied. We may also notice that the aforesaid approach would amount to adopting a different reasoning than the Trial Court while passing a judgment on admission under Order 12 Rule 6 of the said Code but that itself would not make any difference since the judgment is predicated on the legal pleas advanced by the parties and factual matrix available on the record.

19. It may also be observed that in Para 6 of his plaint the respondent categorically stated that on issuance of legal notice dated 09.05.2002 the appellant was called upon to increase the rent by 10% w.e.f. 21.06.2002 and therefore rents stood increased from 3,500 to 3,850 w.e.f. 21.06.2002. It has also been stated that the said notice was duly received and acknowledged by the appellant who also sent a reply dated 23.05.2002 through her counsel. In the aforesaid reply the appellant simply denied the right of the respondent to increase the rent which is untenable in view of the right available to the respondent to increase the rent under Section 6A of the DRC Act.

20. In these circumstances, the appellant having accepted the receipt of the notice became liable to pay the rent at the enhanced rate, that is, by adding 10% which would make the rent to 3,850 even if the rent is taken as 3,500 as on 09.05.2002. The suit has been filed

only thereafter i.e. on 20.10.2004, at which time, the enhanced rate had become payable.

21. A reference can also be made to the judgment of this Court in *Nischint Bagga Vs. Goliath Detectives Pvt. Ltd. & Anr.*, 78 (1999) DLT 432 where following observations have been made:

“7. Therefore, after receipt of the notice under Sections 6A and 8 of the Act, the rent became more than Rs. 3,500 per month and consequently the tenant lost the protection of the Delhi Rent Control Act. Section 6A and Section 8 reads as under:

‘6-A. *Revision of rent*—Notwithstanding anything contained in this Act, the standard rent, or where no standard rent is fixed under the provisions of this Act in respect of any premises, the rent agreed upon between the landlord and the tenant, may be increased by ten per cent every three years.’

‘8. *Notice of increase of rent*—(1) Where a landlord wishes to increase the rent of any premises, he shall give the tenant notice of his intention to make the increase and insofar as such increase is lawful under this Act, it shall be due and recoverable only in respect of the period of tenancy after the expiry of thirty days from the date on which the notice is given.

(2) Every notice under Sub-section (1) shall be in writing signed by or on behalf of the landlord and given in the manner provided in Section 106 of the Transfer of Property Act, 1882 (4 of 1882).’

8. The receipt of notice dated 7.4.1994 calling upon defendant No. 1 to increase the rent at the rate of 10% per annum in terms of Sections 6A and 8 of the Delhi Rent Control Act, 1958 is admitted. The increase of 10% in the last paid rent makes it

Rs.3,850 per month which excludes applicability of the Delhi Rent Control Act, 1958 to the suit premises. In other words, the defendants cannot claim any protection of the Delhi Rent Control Act when the rent is beyond Rs. 3,500 per month.”

16. The learned Trial Court dismissed the said application on the reason mainly, as mentioned in para 30 of the impugned order, that:

“The plaintiff has not placed on record registered sale deed in her favour in respect of the suit property. The Plaintiff has placed on record merely a copy of GPA and an Agreement to Sell & Purchase. It is settled law that an immovable property can be sold only by way of registered sale deed.”

Termination of Tenancy

17. The receipt of legal notice under Section 106 of the Transfer of Property Act is not denied by the respondent therefore, tenancy in the premises would be a month to month after duly served upon the notice, thus, it stood terminated. Even otherwise now as per settled law, the said objection has lost its value in view of settled law on this aspect. See the following decisions :

- i) The Supreme Court in the case of ***Nopany Investments (P) Ltd. Vs. Santokh Singh (HUF)***, 2008 (2) SCC 728 held that the filing of the eviction suit under general law itself was notice to quit upon the respondents and thus even as per the alleged claim of the respondent No.2 of a separate tenancy, the same being a month to month tenancy, the same stood terminated on the filing of the suit and service of summons, plaint and documents thereof upon him.
- ii) In ***Usha Rani Jain v. Nirulas Corner House Private Limited***, ILR (2005) II Delhi 349, this Court held as under:-

“17. Though a plea was taken in the written statement about non determination of the lease because no notice to quit as envisaged under Section 106 of the Transfer of Property Act has been served on the defendants before filing of the present suit, but this aspect was not pressed at the hearing. Even otherwise, **it is a well settled proposition of law that when the term of the lease has expired by efflux of time, there is no need for a landlord to determine the lease by serving quit notice.**”

The objection regarding the Ownership

18. After the purchase of suit property by the petitioner from the Sh. Harbans Lal, he applied with DDA to set the said property freehold as well as for the execution of conveyance deed. The original documents were produced by the petitioner before Court during the course of hearing which show the conveyance deed was executed in the name of the petitioner. Therefore, the objection about the ownership of the property is without any force in view of the settled law. See *Rama Devi Vs. Punam Chand Aggarwal*, 151 (2008) DLT 230. Relevant para 11 reads as under :

“11. Again it is well settled that sales in Delhi through power of attorney, coupled with payment receipt, delivery of possession and other connected documents are well recognized in this city. In *Asha M. Jain v. Canara Bank and Ors.*, 94 (2001) DLT 841, it was held :

“The power of attorney sales and their effect has been considered in *Kuldip Singh v. Surinder Singh*, 76 (1998) DLT 236 : 1999 Raj LR 20. The learned Single Judge of this Court has observed that power of attorney sales in Delhi is the common mode of sale of immovable property to get over the legislative restrictions of transfer of properties. The power of attorney is for consideration and the bargain is followed by delivery of possession to complete the transaction. Further to prevent arbitrary cancellation, Will and affidavit about renouncing rights are taken. The Court repelled the contention that since sub-lease with the Government prohibited transfer, such transfer was opposed to public policy,

since in the view of the Court, public policy gets modified with march of time. The Court recognised the fact that restrictions to sell made everyone dishonest and the power of attorney sale method was devised to get over the restrictions. In fact the Government has partially recognised this since even power of attorney buyers can apply for conversion into free hold on paying penalty. The learned Single Judge relied upon the judgment of the Supreme Court in *S. Chattanatha Karayalar v. Central Bank of India Ltd. and Ors.*, AIR 1965 SC 1856 and *Smt. Indira Kaur and Ors. v. Shri Sheo Lal Kapoor*, AIR 1988 SC 1074; where it was held that in order to arrive at a real nature of transaction, it is open to the Court to look into the attendant and surrounding circumstances and contemporary documents. The learned Single Judge also relied upon the observations in the case of *Usha Malhotra v. G.S. Uppal* in 1991 RLR 223, dealing with the issue of construction agreement which are camouflage for agreement to sell.

We have considered this aspect taking into consideration these judgments and we are in agreement with the view that the concept of power of attorney sales have been recognised as a mode of transaction. These transactions are different from mere agreement to sell since such transactions are accompanied with other documents including General Power of Attorney, Special Power of Attorney and Will and affidavits and full consideration is paid. This is what also has happened in the present case. There are two General Power of Attorneys, Special Power of Attorney and the Will apart from the agreement to sell. One of the General Power of Attorney is registered. Further the Will is also registered. Thus, there are two contemporaneous documents which are registered and they lend authenticity to the date of execution of documents. The power of attorneys are for consideration within the meaning of Section 202 of the Contract Act, 1872. Thus there is no doubt that interest has been created in the property in favor of the appellant. Possession is also been handed over. Thus the provisions of Section 53A of the Transfer of Property Act would also come into play. The Bank is debarred from enforcing any right qua the property other than the right conferred by the agreement to sell. The agreement to sell has nowhere reserved any right on the transferor either for resuming

the property or payment of any additional money. The transferor is debarred from claiming back the property from the appellant. The net result of all this is that the rights have been created in favor of the appellant which cannot be defeated by the attachment order.”

19. Similar view was taken in *Shikha Properties (P) Limited Vs. Bhagwant Singh and Ors.*, 74 (1998) DLT 113; *Ajit Narain Vs. Shri Arti Singh and Ors.*, 81 (1999) DLT 355; *Veer Bala Gulati Vs. Municipal Corporation of Delhi and Anr.*, 104 (2003) DLT 787; *Leela Goel Vs. Prem Sagar*, 2006 (91) DRJ 683; and *Shri O.P. Kohli Vs. Shri Krishan Kumar Gaur*, 137 (2007) DLT 414.

20. This Court in the case of *Zulfikar Ali Khan (dead) through LRs and Ors. Vs. Straw Products Limited & Ors.* 2000 (56) DRJ 590 in para 10 observed as under :

“10. This is a notorious fact that to drag the case, a person so interested often takes all sorts of false or legally untenable pleas. Legal process should not be allowed to be misused by such persons. Only such defense as give rise to clear and bona fide dispute or triable issues should be put to trial and not illusory or unnecessary or mala fide based on false or untenable pleas to delay the suit. The issues will be framed in a suit only when pleadings raise material proposition of law and/or fact which need investigation and so could be decided after trial giving parties opportunities to adduce such relevant evidence as they may think necessary and proper. Material proposition of law or fact would mean such issues which are relevant and necessarily arise for deciding the controversy involved. If a plea is not valid and tenable in law or is not relevant or necessary for deciding the controversy involved, the Court would not be bound and justified in framing issue on such unnecessary or baseless pleas, thereby causing unnecessary and avoidable inconvenience to the parties and waste of valuable court time.”

19. In the present case following facts and circumstances emerge from the pleadings of the parties :

- (1) there exists relationship of land lord and tenant between the parties;
- (2) notice of termination under Section 106 of TP Act has been duly served;
- (3) the rate of rent exceeded Rs.3500/-p.m. when the notice under Section 106 of Transfer of Property Act was served.

20. All the three conditions in the present case are satisfied, the finding of the trial court in the application filed by the petitioners are totally contrary to law and cannot be sustained as the learned Trial Court has not considered the fact that the respondent has admitted the receipt of notice of termination and the rate of rent is more than ₹3500/-. The relationship of landlord tenant is admitted by the respondent in a previous litigation instituted by the respondent against the petitioner. It is settled law that where a claim is admitted, the Court has jurisdiction to pass a decree on admitted claim without leading any evidence in this regard.

21. For the reasons as aforesaid, facts and settled law in this regard, I am of the view that the trial in the matter is not required as the parties are not at issue on any question of law or act to be determined further. The provisions of Order XII Rule 6 CPC are therefore applicable.

22. In view of the settled provisions of law on this aspect, I am of the view that the petitioner is entitled for the decree of possession in respect of the suit premises in their favour against the respondent. The trial Court has wrongly given its finding despite of the settled law on this aspect. In fact, the application under Order XII Rule 6 CPC to the extent of prayer for grant of decree of possession ought to have been allowed. The impugned order is accordingly set aside. The application filed by the petitioner under Order XII Rule 6 CPC is accordingly allowed. Thus, a decree for possession is

passed in favour of the petitioner and against the respondent, in respect of flat no. 22, situated on first floor in Surair Co-operative Group Housing Society, plot no.7 Sector-15, Rohini, Delhi- 110085.

23. As regards damages/mesne profit for occupation, learned trial Court will hold inquiry under Order 20 CPC and pass appropriate orders.

24. Accordingly, parties are directed to appear before learned trial Court on 20th January, 2014.

25. No costs.

(MANMOHAN SINGH)
JUDGE

NOVEMBER 25, 2013